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COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE 328th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 11 May 1998, at 10 a.m.

Chairman: Mr. BURNS

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of Germany (CAT/C/29/Add.2)

1. At the invitation of the Chairman, Mr. Höynck, Mrs. Voelskow-Thies, Mr. Schnigula, Mr. Grohmann, Mr. Schaefer, Mr. Maur, Mrs. Mädrich, Mr. Schmäing and Mr. Huth (Germany) took places at the Committee table.

2. Mr. HÖYNCK (Germany) expressed his Government's continuing determination to carry out its obligations under the Convention and to engage in a fruitful dialogue with the Committee. It had not been easy for Germany, given its Federal structure, to draft the report, but he assured the Committee that the Government had done its best. The Federal political system was also reflected in the membership of the delegation.

3. Mrs. VOELSKOW-THIES (Germany) said that it was her pleasure to inform the Committee of a number of new developments which had taken place since the submission of Germany's initial report and which had led to further improvements in human rights. With regard to articles 2 and 4 of the Convention, section 340 of the Criminal Code, concerning bodily harm committed in office, imposed a penalty of imprisonment ranging from three months to five years for less serious cases, from six months to five years for dangerous bodily harm, and imprisonment of at least one and up to two years in particularly serious cases of bodily harm. The Sixth Criminal Code Reform Act, which had entered into force on 1 April 1998, had increased the penalty for dangerous bodily harm (section 224 of the Criminal Code) and serious bodily harm (section 226 of the Criminal Code). In addition, as the Committee had recommended, attempted bodily harm was now more generally punishable, including in cases of bodily harm in office. Formerly, attempted torture in office had as a rule been punishable only where a major crime had been threatened or where it had been limited to dangerous or serious bodily harm. Penalties had also been substantially augmented for offenders in charge of or responsible for a child under 18 years of age or a person suffering from infirmity or illness.

4. Regarding the implementation of article 11 of the Convention, the question of the rights and protection of witnesses was currently the topic of discussion and research. Furthermore, the provisions relating to the interrogation of witnesses had been extensively amended by the Witnesses Protection Act of April 1998, to the benefit of child witnesses and other witnesses in need of protection. In future, witnesses needing protection would be able to attend the oral hearing via a video link; in certain cases, they could receive legal advice and have legal counsel appointed. The question of the permissibility of using a lie detector was also under discussion. Whereas, at the beginning of the 1980s, the Federal Constitutional Court had deemed the lie detector an inadmissible tool, certain categories of persons due to be interrogated now called for its use, in particular, fathers accused by their wives of sexually abusing their children.

Another topic under discussion was electronic house arrest. The question of work by prisoners and the various matters related to it was also currently being debated by the Federal Constitutional Court.

5. As a supplement to the information contained in appendix II to the report, she noted that an amendment to the law had been enacted in 1997 according to which the detention of aliens awaiting deportation could be continued or ordered under certain circumstances, despite the fact that an application for asylum had been filed. At the international level, the Federal Government had created a legal basis for cooperation with the International Tribunal for Rwanda and had played an active role in the negotiations for the establishment of an international criminal court.

6. With regard to article 14, the figures given on compensation for the victims of criminal prosecution were out of date. By the end of 1997, some 150,000 applications for rehabilitation had been filed and for the most part dealt with under the Rehabilitation Act for Unlawful Criminal Prosecution in the Former German Democratic Republic (GDR). Compensation paid by the Federation and the Länder amounted to 725 million Deutsche marks. That was in addition to payments made under the Act On Maintenance of Victims of War. Pursuant to the Administrative Law Rehabilitation Act, anyone whose health had been damaged as a result of arbitrary administrative action or political persecution by administrative bodies of the former GDR received compensation if the measures carried out by the GDR had been repealed or declared unlawful. Former political prisoners of the GDR or the Soviet Occupation Zone also received compensation if they continued to suffer damage.

7. A number of important decisions had been taken in individual cases. In 1996, 33 persons had been convicted of bodily harm in office; the cases had chiefly concerned violence committed by teachers. Two persons had been convicted of extorting testimony. In 1997, the Federal Court of Justice had acquitted two prison staff who had learned of the ill-treatment of inmates by prison officials, but had failed to report it to the prison governor. The Court had decided that, although they had acted in breach of their official duties, they had not committed any criminal act. Disciplinary proceedings against them were now pending. No German civil servant had been convicted by an international body. The European Court of Human Rights had convicted the Federal Republic of Germany in only one instance on the grounds that the police had kept a person in their custody slightly longer than permitted by law.

8. When the initial report had been submitted, the Committee had urged the Federal Republic of Germany to make the declarations provided for in articles 21 and 22 of the Convention. That possibility was still under examination. The German Government was aware that the complaints procedure was a means of strengthening the protection of human rights and it had therefore accepted the competence of the European Commission on Human Rights to receive and consider applications and the jurisdiction of the European Court of Justice. The Optional Protocol to the International Covenant on Civil and Political Rights had also been in force for Germany since 1993.

9. The CHAIRMAN thanked the German delegation for its introductory statement.

10. Mr. ZUPANČIČ (Country Rapporteur) noted with satisfaction the specific and highly informative nature of the report and its introduction. By way of background information, he recalled that the Convention had entered into force for the entire territory of Germany on 1 November 1990, that Germany had submitted its initial report in 1993 and that the second periodic report had been drawn up in 1997. He pointed out that section 340 of the Criminal Code defined torture very broadly, since it referred to blows and injuries inflicted in office, whereas article 1 of the Convention contained a much more precise definition. Section 340 of the Criminal Code thus related to a general offence, whereas article 1 of the Convention made torture a serious crime. In its initial report, Germany had noted that torture derived from the introduction into German law of an inquisitorial type of judicial system; in fact, torture was a characature of self-incrimination. Many legislations sought to make torture illegal by providing that no one was obliged to bear witness against himself and by establishing that no statement shown to have been obtained through torture could be invoked in proceedings as an element of proof. Could the German delegation describe more specifically the way in which the exclusionary rules of evidence were applied? If evidence had been directly or indirectly obtained through torture and if the judge's decision had been based on that evidence, was the decision automatically quashed on appeal?

11. It would also be interesting to hear more about the case which was mentioned in paragraph 12 of the report and which had been before the European Court of Human Rights when the initial report had been submitted and had in the meantime been decided. As was well known, the best means of preventing torture and ill-treatment was to ensure that the person in custody or pre-trial detention was visited by a lawyer as speedily and as often as possible. What was the duration of custody awaiting trial in Germany? When must the suspect be brought before a judge and at what point was he informed of his rights? Were police officers who did not respect all aspects of the rights of persons under arrest penalized? Was the information obtained by the police communicated to the judge?

12. He would like to know whether German domestic law was fully in keeping with the provisions of article 3 of the Convention.

13. Concerning appendix I of the report (Accusations of ill-treatment by the police), he wondered whether all police officers suspected of misconduct and of causing bodily harm in the exercise of their duties were in fact prosecuted by the public prosecution office, and whether the victims could, in certain circumstances, have recourse to a subsidiary proceedure enabling them to bring charges on their own behalf against law enforcement officers. If that was so, how many proceedings of that type had been instituted and what had the result been (convictions, compensation)?

14. He wondered how the indirect reference made in the report (paras. 8 to 13) to the principle of proportionality, in other words, to the necessary relationship between the means used and the aim in view, was to be understood. Did it mean the principle traditionally invoked by constitutional courts or the more "prosaic" idea that the police should not inflict disproportionate and unjustified treatment on persons in the exercise of their duties?

15. With regard to article 15, the Committee wished to know whether, in cases where the Appeals Court found that a statement had been obtained under torture, it sent the case back to the court of first instance. Given the large number of cases of ill-treatment of foreigners by police officers that had been reported by national and international NGOs, he asked how the German Government could claim (para. 7 of appendix I) that those cases in which the investigation had in fact revealed misconduct on the part of police officers remained isolated. How many complaints had been brought against law enforcement officers in 1995, 1996 and 1997? How many convictions had there been and what punishments had been imposed? What was the proportion of foreigners among the plaintiffs? How were the data provided by the police of the 16 Länder and the Federal police authorities collated and analysed?

16. In connection with article 10, he asked how many hours of compulsory education in conflict settlement and communication with ethnic minorities were included in police training.

17. In respect of article 11, he asked in what cases an arrested person could be refused the right to inform a member of his family of his arrest and whether detained persons were informed of their rights immediately after arrest in a language they understood. Given that many victims of police brutality reported refusal by police to reveal their identity and that many of the charges brought were rejected on the grounds that the identity of the officers involved could not be established, the Committee would like to know why police officers did not wear their number on their uniform.

18. Referring to article 12, he asked how much time on average was needed by the Public Prosecution Office to investigate complaints of ill-treatment brought against police officers, whether prosecutors personally interrogated the victims, the police officers and any other witnesses and whether they visited the premises where the ill-treatment was alleged to have been inflicted. Since the work of the Commission of Inquiry set up by the Hamburg Parliament to examine the hundreds of complaints brought against Hamburg police officers had resulted in the publication of a single-page report, he was not sure how much confidence the German Government could place in the country's arrangements for disciplinary action. Lastly, he asked whether return procedures had been reviewed after the death in August 1994 of a Nigerian national on the point of being expelled to his country of origin.

19. The CHAIRMAN (Country Rapporteur), endorsing all the questions put by Mr. Zupančič, asked for a further explanation of certain points. Paragraph 27 of the report stated that the results of the research project carried out by a working group of the Conference of Ministers of the Interior into the specific causes and manifestations of racism and xenophobia in the police entirely exonerated the police forces from the accusation of widespread xenophobia. Given that there was a distinction between xenophobia and racism and since the cases of ill-treatment recorded related mostly to foreigners of colour, he wondered whether the accusation of racism could be completely rejected. With regard to the problem of identifying police officers mentioned by Mr. Zupančič, it was hard to see why policemen should not be identifiable from their uniforms.

20. Lastly, the German authorities were to be congratulated on their support for the treatment centre for victims of torture in Berlin and the United Nations Voluntary Fund for Victims of Torture.

21. Mr. SORENSEN, commending the excellent cooperation of the German authorities with the delegation from the European Committee for the Prevention of Torture during its visits to Germany in 1991 and 1996, said that his questions would relate to the implementation of article 10 of the Convention. The training of police officers and prison staff was, of course, essential, but that of health workers was no less so. It was unfortunate that the report said nothing on that aspect, particularly since, there being so many refugees in Germany wide spread throughout the country, all doctors were at some time called upon to examine a refugee. That was why it was so important for medical personnel to be trained to recognize the signs or after-effects of torture among their patients.

22. From the outset, Germany had recognized the competence of the European Commission for Human Rights to receive and examine applications (para. 6 of the report). That did not, however, relieve it of the need to recognize the competence of the Committee under articles 21 and 22 of the Convention and he urged the German authorities to consider making the necessary declaration as soon as possible.

23. Lastly, he joined in praising the support of the German Government for the treatment centre for victims of torture in Berlin and its participation in the Voluntary Fund for Victims of Torture. In connection with the latter, he wondered whether the German authorities might not consider increasing their contribution, on the occasion, for example, of 26 June, which the General Assembly had declared Victims of Torture Day, and of the fiftieth anniversary of the Universal Declaration of Human Rights.

24. The CHAIRMAN thanked the German delegation for being present and invited it to reply to the Committee's questions at the next meeting.

25. The delegation withdrew.

The meeting was suspended at 11.10 a.m. and resumed at 11.25 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

Draft amendments to the rules of procedure of the Committee (CAT/C/XX/Misc.5)

26. The CHAIRMAN invited Mr. Gonzalez Poblete to introduce the amendments he was proposing to the rules of procedure.

Draft amendment to rule 14

27. Mr. GONZALEZ POBLETE said that the first amendment was that the words "for the first time" should be added after the words "Before assuming his duties", so that the members of the Committee would make the declaration provided for only when they first took up their duties. According to rule 12 of the rules of procedure, the term of office of members of the Committee began the day after the date of expiry of the term of office of the members

they replaced. In fact, however, members served only for three years and eight months, since rule 14 required each of them first to make the solemn declaration provided for in rule 14. Thus, when a former member was re-elected, he again made the solemn declaration at the beginning of the session following his re-election and, between the date on which he was re-elected and the date on which he again made the declaration, several months went by which his term of office could be regarded as having lapsed. However, a re-elected member might have responsibilities between two sessions and his activities could then be interpreted as null and void, since he would have exercised his mandate wrongfully without first having made the declaration provided for in rule 14. The phrase that he was proposing would eliminate any problem of interpretation.

28. Mr. EL MASRY said he wanted to be sure that Mr. Gonzalez Poblete's proposal meant that each member of the Committee would make the solemn declaration only once, when he was first elected, and that the declaration would be valid for as long as he was a member of the Committee.

29. Mr. GONZALEZ POBLETE said that that was the case.

30. Mr. CAMARA said that it should be clearly stated that re-elected members would not have to make the solemn declaration again.

31. The CHAIRMAN, referring to a suggestion by the Secretary of the Committee, proposed that the beginning of rule 14 should read: "Before assuming his duties after his first election, each member of the Committee shall make the following solemn declaration in open Committee:".

32. It was so decided.

33. Rule 14, as amended, was adopted.

Proposed amendment to rule 18

34. Mr. GONZALEZ POBLETE said that the new wording of rule 18 proposed in document CAT/C/XX/Misc.5 was intended to specify and strengthen the position of a Vice-Chairman appointed to serve as the Acting Chairman, who, under rule 19 of the rules of procedure, had the same rights and duties as the Chairman. As it stood, rule 18 related only to cases in which the Chairman was temporarily absent during a session and did not cover those in which the Chairman was subject to a lasting disability, as had happened between the nineteenth and twentieth sessions, when Mr. Dipanda Mouelle had not been re-elected to the Committee. In order to settle urgent and important questions arising between the two sessions, the secretariat had had to consult all three Vice-Chairmen, and that had been a cumbersome procedure.

35. The CHAIRMAN invited comments on paragraph 1 of the draft amendment to rule 18.

36. Mr. SORENSEN pointed out that the proposal was particularly important because, very often, the steps that had to be taken between sessions, under rules 20 or 22, for example, needed to be taken immediately. On a point of detail, he asked whether it was customary in the United Nations to follow

alphabetical order in cases of equal seniority. The practice in the Council of Europe, for example, was to use age as the criterion in deciding between two persons.

37. Mr. BRUNI (Secretary of the Committee) said that the current wording of the Committee's rules of procedure was similar to that of the other human rights treaty bodies. He did not know what the practice was in United Nations political bodies.

38. Mr. SILVA HENRIQUES GASPAR said that the usual practice was to decide between two candidates according to age.

39. Mr. EL MASRY said that, in cases where the Chairman was temporarily absent in the course of a meeting, the current wording of rule 18 was adequate. Mr. Gonzalez Poblete's proposal was more suited to cases of prolonged or definitive absence or disability.

40. Mr. GONZALEZ POBLETE said that the current wording of rule 18 could be retained as paragraph 1 of the new rule, to cover the case of brief absences by the Chairman. The new paragraphs that he was proposing would then become paragraphs 2 and 3. Mr. Sorensen's proposal that age should be used as the criterion in appointing an Acting Chairman was perfectly acceptable; what was important was that there should be a rule.

41. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to retain the criterion of age, proposed by Mr. Sorensen, and to replace the words "alphabetical order shall be followed" by the words "the order of seniority in age shall be followed".

42. It was so decided.

43. Paragraph 1 of the draft amendment, as amended, was adopted.

44. The CHAIRMAN proposed that the existing text of rule 18 should be retained as paragraph 1 of the new rule 18.

45. It was so decided.

46. The CHAIRMAN proposed that paragraph 1 of the text proposed by Mr. Gonzalez Poblete, as amended, should be adopted as paragraph 2 of the new rule 18.

47. It was so decided.

48. The CHAIRMAN invited the Committee to express its views on paragraph 2 of the draft amendment to rule 18.

49. Mr. GONZALEZ POBLETE explained that the paragraph was intended to cover cases in which the elected Chairman ceased to be a member of the Committee, or was in any of the situation referred to in rule 20 of the rules of procedure, until such time at as the Committee was able to elect a new Chairman.

50. Mr. EL MASRY said that it might be better to be more explicit and to insert the words "in the period between sessions" before the words "is in any of the situations referred to in rule 20".

51. Mr. El Masry's proposal was adopted.

52. The CHAIRMAN proposed that paragraph 2 of the text proposed by Mr. Gonzalez Poblete, as amended, should become paragraph 3 of the new rule 18.

53. It was so decided.

54. Rule 18, as whole, as proposed in document CAT/C/XX/Misc.5, as amended, was adopted.

Proposed amendment to rule 78

55. Mr. GONZALEZ POBLETE said that the paragraph he was proposing to add was intended to cover the case in which the consideration, in a public meeting, of the report of a State Party under article 19 of the Convention took place at a time when an inquiry was being carried out under article 20 of the Convention, a procedure dealt with in closed meetings. There was a risk, particularly for the members of the Committee carrying out the inquiry, of confusing the information obtained in the course of the public proceedings with that collected during the inquiry, which should remain confidential. The proposed sentence would read: "The Committee may defer ...", not "shall defer".

56. After an exchange of views in which Mr. SORENSEN, Mr. YAKOVLEV and Mr. EL MASRY took part, the CHAIRMAN said he took it that the Committee adopted the draft amendment to rule 78 proposed and orally amended by Mr. Gonzalez Poblete.

57. The proposed amendment was adopted.

Follow-up to the work of the Working Group on the Question of the Optional Draft Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

58. The CHAIRMAN recalled that the Committee was represented at the meetings of the Working Group charged with drawing up a draft optional protocol to the Convention. So far, Mr. Sorensen had acted as the Committee's representative. The Committee again needed to appoint one of its members to represent it at the meetings of the Working Group.

59. Mr. ZUPANČIČ proposed that Mr. Sorensen should be reappointed to represent the Committee at the meetings of the Working Group.

60. It was so decided.

61. Mr. EL MASRY said that, as a new member of the Committee, he would like to know more about the work of the Working Group.

62. The CHAIRMAN invited Mr. Sorensen to give the Committee a brief report on the proceedings of the most recent meeting of the Working Group on the preparation of the draft optional protocol to the Convention.

63. Mr. SORENSEN, describing the background to the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, said that its purpose was to set up inspection machinery which would be similar to that established by the European Committee for the Prevention of Torture and would take the form of a subcommittee of the Committee against Torture for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. The subcommittee was to have a mandate which would allow it to carry out inspections - without being invited to do so by the State concerned - and to have unlimited access to all persons detained against their will and to all places of detention, not only police stations and prisons, but children's homes, psychiatric institutions and even refugee camps. It was therefore a very broad mandate that was to be given to the subcommittee, whose work was intended to be completely confidential, but carried out in cooperation with the State. Each visit was to give rise to a report.

64. The regional system set up by the Council of Europe had proved to be very useful and effective and the plan had been to transpose that regional mechanism to the universal level. However, one would not replace the other. The number of members of the proposed subcommittee would depend on the number of States parties; they would be elected as experts, having specific human rights qualifications in general, but also a more specialized knowledge of prisons, police, medicine, and so forth. The subcommittee would elect a number of persons, provisionally set at five, who would carry out visits accompanied by appropriate "technical experts", the term finally agreed on rather than "advisers", as suggested in some quarters. The project was therefore quite advanced, although some important questions remained to be settled, such as the actual arrangements for visits, the establishments to be visited and the composition and mandate of the missions of inquiry. On the latter point, the sole power of the machinery established by the Council of Europe was to make a public declaration if the State party systematically refused to cooperate with it and to abide by its recommendations. It therefore had to be decided whether the sub-committee would have the same power.

65. Mr. GONZALEZ POBLETE said that it was his understanding that the majority of States had originally proposed the establishment of a committee that would be independent of the Committee against Torture, but the United Nations had categorically objected to the establishment of any new body. He would like a further explanation of that point.

66. Mr. SORENSEN said that the matter had in fact given rise to lengthy discussion. It had been decided to establish a sub-committee of the Committee against Torture in order to avoid having to set up a completely new body. At all events, the subcommittee would carry out its work without any intervention by the Committee against Torture.

The meeting rose at 12.30 p.m.